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Letter dated 25 October 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 25 August 2004 (S/2004/690). The Counter-Terrorism Committee has received the attached fourth report from Ukraine submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 22 October 2004 from the Permanent Representative of Ukraine to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In response to the letter of the Chairman of the Committee dated 16 July 2004, I have the honour to submit the information on the comments and questions of the Committee after consideration of the third report of Ukraine, submitted to the Committee on 14 October 2003 (see enclosure).

(*Signed*) Valeriy **Kuchinsky**
Ambassador
Permanent Representative

Enclosure

[Original: Russian]

Supplementary report on measures taken by Ukraine in implementation of Security Council resolution 1373 (2001)

Reply to question 1.1

Pursuant to the Act "on measures to prevent and counteract the legalization (laundering) of proceeds of crime", the State Department of Financial Monitoring of the Ministry of Finance is authorized to monitor financial transactions carried out in Ukraine by banks, the insurance sector, money remittance/transfer services, etc.

When there are sufficient grounds for believing that a financial transaction may be linked to money-laundering or the financing of terrorism, the Department reports the facts to Ukraine's law enforcement agencies.

This year the Department has received a number of communications from banking institutions concerning financial transactions which prompted further investigation. Having studied the documents relating to these transactions, the Department transmitted to the law enforcement agencies some 30 suspicious transaction reports. As of October 2004, this work had resulted in the initiation of criminal proceedings in four cases.

The law enforcement agencies also detect and investigate cases of money-laundering on their own initiative. In the first quarter of 2004, these agencies (Ministry of Internal Affairs, Security Service, Office of the Public Prosecutor, State Tax Administration) together instituted criminal proceedings under article 209 of the Criminal Code (on legalization (laundering) of proceeds of crime) in a total of 153 cases, 47 of which came to court.

Reply to question 1.2

Matters of client identification are regulated by the Acts "on banks and banking activities" and "on measures to prevent and counteract the legalization (laundering) of proceeds of crime".

Pursuant to this legislation, the person or body responsible for primary financial monitoring conducted on the basis of the original documents or certified copies submitted is required to identify the persons carrying out the financial transactions in question and the persons on whose behalf the transactions are being carried out or who are beneficiaries thereof.

The Act "on banks and banking activity" prohibits banks from opening and servicing anonymous (numbered) accounts or entering into agreements with clients — either legal entities or physical persons — when it is suspected that the entity or person in question may not be acting on its or his own behalf. An account may be opened and transactions carried out only after verification of the client's identity.

Banks are entitled to request, and clients are required to furnish, the documents and information necessary for establishing their identity, the nature of their business, and their financial circumstances. If a client does not comply with such a request or deliberately furnishes false information about himself, the bank

refuses to accommodate him. When there are grounds for doubting the truth of the information given by a client, the bank reports his financial transactions to the State Department of Financial Monitoring.

Banks are entitled for purposes of identification to request information about such clients and their directors from the State authorities supervising and/or monitoring the activities of the entity in question and from banks and other legal entities implementing the measures provided by law for gathering such information from other sources.

In addition, for purposes of identifying a client who is a legal entity banks are also entitled to carry out checks on the physical persons who own the entity and have a direct or indirect influence on it or gain economically from its activities. If the legal entity is a corporation, the bank may identify the physical persons holding a substantial share of its capital.

The Act "on banks and banking activities" provides that all documents relating to the conduct of financial transactions subject to monitoring and particulars identifying the persons carrying out such transactions must be kept by banks for five years.

Banks design and use appropriate questionnaires for the identification and scrutiny of their clients. Such questionnaires are internal documents containing information obtained by a bank on the results of its identification and scrutiny of its clients and analysis of their transactions and on the bank's conclusions as to the client's reputation and its assessment of the risk that he may be carrying out transactions to legalize proceeds of crime.

Banks update the information on the identification and scrutiny of clients at least once a year when the risk that they may be conducting money-laundering transactions is assessed by the bank as high. For other clients, the information must be updated at least every three years.

Pursuant to the Decree of the Cabinet of Ministers of 17 March 1993 "on trust companies", a trust company is an additional-liability company which performs the functions of representative under a contract concluded with the trustees of property acting in exercise of their ownership rights. Under the Act "on financial services and State regulation of financial service markets", trust companies may provide financial services only after having identified the clients in question. Persons are identified by trust companies for the purpose of obtaining information about trustees, settlors/grantors and beneficiaries of trusts in accordance with the procedure described above.

Information on cases giving rise to suspicion of terrorist activities is transmitted to foreign law enforcement agencies or other counter-terrorist entities in response to requests submitted by them under multilateral and bilateral cooperation agreements. Ukrainian law enforcement agencies also cooperate with foreign counterparts in this field in accordance with the procedures set out in the anti-terrorism conventions of the United Nations and the Council of Europe to which Ukraine is a party, including the International Convention for the Suppression of the Financing of Terrorism.

Ukraine also cooperates in these matters in the context of the Financial Action Task Force on Money Laundering (FATF) and the Egmont Group, as well as with

other international organizations concerned with cooperation to prevent and combat money-laundering, especially Interpol.

Reply to question 1.3

The State Department of Financial Monitoring has sufficient human, financial and technical resources to carry out its mandate. It is funded from the State budget. It had a 100-strong staff in 2004. From 1 January 2005 the staff will number 238 as a result of an increase in the number of the Department's regional units.

In addition, pursuant to the Act "on amendments to article 4 of the Act 'on measures to prevent and counteract the legalization (laundering) of proceeds of crime'" of 18 May 2004, on 1 January 2005 the Department, which at present functions as part of the Ministry of Finance, will be transformed into a central executive agency with special status: the State Financial Monitoring Committee. This change will mark compliance with one of the FATF recommendations, to the effect that the Department should be removed from the remit of the Ministry of Finance.

Reply to question 1.4

Informal banking practices and alternative remittance agencies involved in the transfer of funds are regulated by the Act "on payments systems and money transfers in Ukraine", pursuant to which these activities may be carried out by intra-State non-bank payments systems. The participants in such systems, which may be banks and other financial agencies, must first register with the National Bank, which licenses them to conduct money-transfer activities.

The existing administrative mechanisms for preventing informal money/value transfer systems from operating and from being used for the purpose of financing terrorism include the following arrangements. The transfer of money/value is effected with the participation of a clearing bank, which identifies clients in accordance with the procedure described in the reply to question 1.2. The improper use of funds, especially for the purpose of financing terrorism, is prevented by regular checking and analysis of financial transactions under non-bank payments systems by the Department, the National Bank, the State Auditing Service, and the State Tax Administration. These agencies are responsible for ensuring that money-transfer services are operated in accordance with the requirements contained in the Security Council resolution.

It should accordingly be noted that Ukraine has the necessary provisions and mechanisms to ensure compliance with the requirements of paragraph 1 of the resolution.

As of October 2004, no remittance or transfer agencies constituting intra-State non-bank payments systems and having the corresponding licences had been registered in Ukraine, apart from banking institutions.

Ukraine conducts regular checks of the activities of foreign-exchange bureaux and remittance agencies to verify their compliance with the requirements on the reporting of suspicious transactions.

Reply to question 1.5

Apart from the Ministry of Justice, the other agencies monitoring the funds collected by charitable, religious and other associations include financial agencies and State tax inspection agencies. These agencies monitor the financial activities of such associations carried on in pursuance of their statutory purposes, in particular their procedures for the use of property and funds intended for the provision of charitable assistance, as well as the sources and scale of their revenues, tax payments, and money/value transfers and their use of systems for making such transfers.

In addition, the National Bank monitors the procedures for opening and operating the bank accounts of these organizations and their conduct of financial transactions for charitable purposes.

Pursuant to the Act "on charity and charitable activities", persons who transfer property, money or other items of value to charitable organizations are entitled to receive an account of the use of such property, money or other items. Recipients of assistance from charities in the form of charitable contributions or donations for specific purposes (charitable grants) are required to account for their use to the charitable organizations concerned.

Coordination between the Ministry of Justice and the other agencies involved in criminal investigation of the activities of charitable, religious and other associations is effected by means of exchanges of information, creation of inter-agency working groups, and implementation of joint measures.

The procedures for dealing with requests from other States to investigate particular organizations suspected of having terrorist links are described in the reply to question 1.2 above.

There have been no cases of judicial action against foreign or domestic non-profit organizations on account of their suspected involvement in the financing of terrorism. Ukraine has not frozen the assets of any non-profit organizations because of their links with terrorist groups or terrorist activities.

Reply to question 1.6

Ukraine is indeed training administrative, investigative, prosecutorial and judicial authorities in enforcing the law in the areas described in question 1.6. The study curriculum for officials of those authorities and for specialists in various economic sectors cover such issues in their teaching of disciplines such as financial and economic analysis, organization and tactics for combating economic crime and detecting economic crime.

Moreover, continuing-education and skills-improvement training courses for those specialists teach methods of detecting unusual or suspicious financial transactions, including those which might be connected with terrorist activity, and methods of preventing the transfer of illegal funds. Such courses cover subjects including analysis of the corpus delicti of offences resulting in liability for the legalization (laundering) of the proceeds of crime; the steps involved in legalizing (laundering) the proceeds of crime, and the characteristics of evidence in such cases; variations in methods of legalizing (laundering) the proceeds of crime, and investigation tactics and methods.

The law enforcement agencies of Ukraine have developed and are putting into use methodological recommendations for the detection and investigation of crimes connected with the legalization (laundering) of proceeds of crime. Also in use are teaching manuals regarding the detection, documentation and investigation of crimes connected with money-laundering, including the laundering of funds which could be used to finance terrorism.

Reply to question 1.7

The strategy for preventing money-laundering and the financing of terrorism is reflected in three existing State programmes: the Programme of State Counter-terrorism Measures 2003-2005, the Comprehensive Programme to prevent the illegal export abroad of funds and valuable items and to return them to Ukraine and the Programme for counteracting the legalization (laundering) of the proceeds of crime.

Those programmes provide for a series of administrative, logistical and legal measures, to be undertaken by entities including investigative bodies, in order to prevent effectively any transfer of funds to terrorist organizations, uncontrolled outflows of capital and assets from States' financial systems, and possible use of such resources to finance illegal acts.

Reply to question 1.8

An interdepartmental working group has been set up to promote cooperation and exchanges of information between Ukrainian State bodies involved in investigating terrorist activities. Its main functions include coordinating the activities of all State bodies connected with preventing the financing of terrorism, exploring methods and trends in the legalization (laundering) of funds obtained by criminal means and arranging exchanges of information and of methodology recommendations of mutual interest in combating the legalization (laundering) of such funds.

Ukraine is continuing preparatory work for a single national information system regarding the legalization (laundering) of proceeds of crime and the financing of terrorism. This would further improve the exchange of information among all State bodies.

With regard to the implementation of subparagraph 3 (d) of the resolution, and Ukrainian policy on sharing information with other States, it should be noted that Ukraine, as a signatory to all 12 of the universal counter-terrorism conventions, including those on preventing the financing of terrorism, is pursuing a policy of active cooperation with other States to exchange information on those issues. One example of that policy is the recent completion of arrangements for inclusion in the Egmont Group database. Ukraine is also taking steps to expand bilateral cooperation and conclude the appropriate agreements with other countries.

Reply to question 1.9

The legal provisions and administrative procedures regulating the freezing of assets, economic resources or financial services directly or indirectly connected with terrorist activity or its financing, in connection with the organizations or individuals

described in subparagraph 1 (c) of the resolution and in question 1.9, are laid down in a number of Ukrainian laws and regulations.

Those laws and regulations include the Act "on organizational and legal principles for combating organized crime" the Act "on financial services and State regulation of financial service markets", the Act "on banks and banking activities", the Presidential Decree "on measures for developing the system to counteract the legalization (laundering) of proceeds of crime and the financing of terrorism", and the relevant resolutions of the Cabinet of Ministers of Ukraine.

These laws and regulations can be used as a basis to seize property, investments, resources and similar valuable items belonging to legal entities or physical persons directly or indirectly involved in terrorist activity, to suspend transactions using their accounts and to freeze assets and economic resources or halt financial and related services.

The procedure for blocking transactions using the accounts of such entities or persons is subject to authorization by a prosecutor, the order of an investigator or agent of the State, or to a court decision.

Ukrainian legislation imposes criminal liability for any person committing a crime relating to the financing of terrorism.

In implementation of its international obligations in that regard, including those under the United Nations Convention against Transnational Organized Crime, the International Convention for the Suppression of the Financing of Terrorism, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and other international legal instruments against terrorism, Ukraine is undertaking a series of measures provided for in the Presidential Decree referred to above and in a number of resolutions and orders of the Cabinet of Ministers of Ukraine.

Reply to question 1.10

Current Ukrainian legal provisions empower the relevant authorities to freeze funds, regardless of their origin, deposited in accounts belonging to any person or entity linked to terrorist activity, including in cases in which they appear on lists established by the United Nations Security Council, Ukraine or other States or organizations. The Ukrainian authorities have the necessary powers to implement the requirements of subparagraph 1 (c) of the resolution in full.

To supplement the information in the replies to questions 1.1, 1.2 and 1.9, the following description of the procedure for freezing financial assets should be noted. The targets of primary financial monitoring, which are determined by the Act "on preventing and counteracting the legalization (laundering) of proceeds of crime" are obliged to report unusual transactions to the State Department of Financial Monitoring and to the law enforcement bodies.

A number of regulations of the Cabinet of Ministers of Ukraine — including, for example, resolution No. 1800 of the Cabinet of Ministers of 28 December 2001 on measures to implement United Nations Security Council resolution 1373 of 28 September 2001 — regulate the matter of detecting and freezing the assets of persons directly or indirectly connected with terrorist activities. In accordance with those provisions, the Ministry of Finance, the Ministry of Internal Affairs, the State

Tax Administration, the Security Service, other central and local executive bodies and the Council of Ministers of the Crimean Autonomous Republic are empowered to take the necessary action to arrange for the seizure of funds and similar financial assets belonging to persons who have committed, attempted to commit, participated in or facilitated the commission of terrorist acts; or to persons and entities acting on behalf of, or at the direction of, such persons.

The State authorities also take the necessary action to prevent and eradicate the direct or indirect supply of any funds, financial assets and financial or economic resources or other relevant financial services by physical persons or legal entities for use in the interests of persons who commit, attempt to commit, or facilitate the commission of a terrorist act.

In order to comply with Security Council resolutions 1267 (1999), 1333 (2000) and 1390 (2002), the territorial internal affairs bodies are regularly sent updated lists of persons linked to terrorist activities to enable checks to be conducted and high-priority investigations to be carried out at the request of the law enforcement bodies of foreign States.

Ukraine has so far not found any instance of financial assets or other economic resources being frozen, seized or confiscated as a result of having been used to finance terrorism. It has likewise found no instances of the freezing of property of individuals and/or entities identified on lists drawn up by the United Nations Security Council, Ukraine or other States or organizations.

Reply to question 1.1l

A draft Act "on amendments to certain laws of Ukraine on questions relating to counteracting the legalization (laundering) of proceeds of crime and the financing of terrorism" was drawn up with the aim of implementing the revised Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF) adopted at the Task Force's meeting in Berlin in June 2003. The draft Act takes account, in particular, of provisions of the International Convention for the Suppression of the Financing of Terrorism and the recommendations of the United Nations Office on Drugs and Crime for improving Ukraine's national legislation on combating the financing of terrorism.

With regard to implementation of subparagraph 1 (b) of the resolution, Ukrainian legislation already provides for criminal liability for offences connected with the financing of terrorism. However, in order to pursue full implementation of the above provisions of the resolution and Convention, including those enshrined in articles 2, 8, 14 and 18, the draft Act includes an article on the financing of terrorism and establishes criminal liability for such actions. The draft Act is currently under review in the Verkhovna Rada (Parliament).

An interdepartmental working group, which includes deputies of the Verkhovna Rada, is continuing its work on the draft Act "on arrangements for providing asylum in Ukraine to aliens and stateless persons". The Verkhovna Rada is also currently reviewing a draft Act "on amendments to the 'Act on refugees'".

In accordance with the final documents adopted at the 2001 Warsaw Conference on Combating Terrorism, resolution No. 1694 of the Cabinet of Ministers, of 14 December 2001, approved a Programme for the implementation of the provisions of the Warsaw Conference, providing for a series of legislative and

organizational measures, including improvements to the structure and working methods of the Anti-Terrorist Centre.

Reply to question 1.12

In the context of Ukraine's counter-terrorism strategy, the criminal investigation and prosecution of persons engaged in terrorist activity is carried out in accordance with Ukraine's Act "on combating terrorism" and also with its criminal and criminal procedural legislation. In addition, the criminal investigation and prosecution of such persons is carried out on the basis of procedures set forth in bilateral and multilateral agreements with other States in this area, including the 12 counter-terrorism conventions of the United Nations, the 1957 European Convention on Extradition, and the 1977 European Convention on the Suppression of Terrorism.

Preventive measures, including counter-terrorist intelligence, are carried out in accordance with national legislation as well as through cooperation by the law enforcement agencies of Ukraine with those of other States, including the exchange of appropriate operational information.

The conduct of operations by special units for the forceful suppression of terrorist acts is defined by Ukraine's Act "on combating terrorism" and involves the use in counter-terrorism operations of special units under the responsibility of various departments.

In order to ensure the physical protection of potential terrorist targets, including important facilities and facilities presenting a heightened technogenic and ecological risk, a "methodology for determining the categories of vulnerability to terrorism of the main potential targets of terrorist activity in the territory of Ukraine" has been worked out. Facilities potentially at risk have been categorized in terms of their vulnerability to terrorism. Measures to protect potentially endangered facilities from possible terrorist attacks are taken in the context of integrated training exercises with the participation of the forces and resources of various departments. The level of protection of such facilities is verified by holding integrated counter-terrorist training exercises, including international ones.

In accordance with the Act "on combating terrorism", a strategic analysis and prediction of emerging threats is made by the Anti-terrorism Centre of Ukraine's Security Service and the Centre's Interdepartmental Commission which collects, generalizes, analyses and evaluates information on the status of terrorism and trends in its potential proliferation both in Ukraine and abroad.

In reply to the question on Ukraine's anti-terrorist legislation, it is pointed out that Ukraine has already adopted a set of regulatory legal instruments which ensure the fully effective operation of the State's anti-terrorism system. Foremost among these is Ukraine's Act "on combating terrorism" which defines the legal and organizational basis of the fight against terrorism, the procedures for the criminal investigation and prosecution of persons suspected of committing or financing terrorist acts; the authority and duties of the executive authorities, citizen's associations and organizations, officials and individual citizens; the system for coordinating their activities, the safeguards of the legal and social protection of citizens in connection with their participation in counter-terrorism, and the Ukrainian Penal Code which includes some 30 articles dealing with counter-terrorism, together with other regulatory legal instruments.

The provisions of the Programme of State Counter-Terrorism Measures 2003-2005 adopted by the Cabinet of Ministers of Ukraine are intended to further improve the normative basis of counter-terrorism, to ensure an appropriate level of coordination of counter-terrorist activities by the authorities of the State, to improve cooperation with international counter-terrorist organizations and to enhance the effectiveness of the operation of the State's counter-terrorism system.

Information on the drafting of amendments to Ukraine's national counter-terrorism legislation is provided in the reply to question 1.11.

Ensuring border and immigration controls, controls to prevent trafficking in drugs, arms, and biological and chemical weapons and their precursors and the illicit use of radioactive materials are the responsibility of the State Border Service and the State Customs Committee.

In order to ensure effective border and immigration controls and controls preventing illegal crossing of the State border of Ukraine and the cross-border transport of the items mentioned, the State Border Service uses the automated "Giart-5" information system. This system is used to update the database and to compile an inventory of all instances of illegal acts on the State border, including the illegal movement across the State border of drugs, arms, ammunition, radioactive materials, and biological and chemical weapons and their precursors. The database of the automated information system contains full particulars of any person who commits an illegal act on the border together with similar information on goods and items seized on the State border in the event of illegal import or export.

Ukrainian legislation establishes criminal liability for offences connected with illegal crossing of the border, the smuggling of drugs and psychotropic substances and their analogues and precursors, and the illegal use of radioactive materials.

In order to coordinate the operation of border and immigration controls and enhance their effectiveness, joint interdepartmental activities are conducted with a view to preventing potential crossing of the Ukrainian State border by terrorists, the illegal transport across the border of substances and items the import and export of which are prohibited and which may be used in the commission of terrorist acts. In addition, work is proceeding to create new border protection units and to reorganize mobile border units (rapid reaction units).

Work is also in hand to further develop and enhance cooperation with other States on fighting transnational organized crime. In particular, in the border regions of Ukraine working meetings are held on a regular basis with representatives of regional special service units and law enforcement agencies on questions of improving the coordination of their activities.

In this connection it is also worth mentioning that, under the joint project of the European Community and the United Nations Development Programme, Belarus, Ukraine and Moldova against Drugs (BUMAD), Ukraine took part in the first phase of establishing a system for the exchange of confidential information in countering drug trafficking.

Coordination of the work of government departments in all the areas listed in accordance with the Act "on combating terrorism" is carried out by the Interdepartmental Commission of the Anti-terrorist Centre.

Legal provisions applicable to counter-terrorism are contained in the Constitution of Ukraine, the Ukrainian Penal Code, the Act "on combating terrorism" and other laws, decrees of the President of Ukraine, resolutions and orders of the Cabinet of Ministers as well as the 12 United Nations counter-terrorism conventions, which were ratified by Ukraine, the European Convention on the Suppression of Terrorism and other multilateral and bilateral treaties to which Ukraine is a party. The implementation of legal provisions, including administrative procedures, set forth in the above instruments, constitute the system of the state-wide counter-terrorism measures of Ukraine, making it possible to conduct an effective policy and practical work in all aspects of this field.

Reply to question 1.13

Operational or investigative actions in the implementation of counter-terrorism measures are conducted in strict accordance with national legislation, in particular the Acts "on the organizational and legal bases for combating organized crime" and "on combating terrorism", as well as the Penal Code and the Code of Criminal Procedure of Ukraine, and other legislative enactments.

Operational or investigative action carried out exclusively by decision of a court or with the sanction of the Public Prosecutor, are restricted to suspects. The conduct of such action with respect to suspects must not exceed the time limits established by legislation on criminal procedure. Agencies of the Public Prosecutor's Office supervise compliance with the law during operational search measures.

Materials obtained in the course of operational search activities relating to potentially illegal activity are verified by the law enforcement and monitoring bodies. On the basis of the outcome of such verification, the authorities of the Public Prosecutor's Office decide whether or not to institute criminal proceedings or to transfer the materials to another investigative jurisdiction.

Any investigative actions conducted jointly with other States in the field of counter-terrorism may be governed by Ukraine's national legislation where an international treaty has been concluded specifying the procedures for carrying out such action.

Reply to question 1.14

Ukraine's legislation contains legal and administrative provisions for the protection of vulnerable persons involved in the prosecution of terrorist crime. Specifically, the protection of persons collaborating with the competent authorities in combating terrorism and of persons taking part in criminal proceedings in this field is regulated by the Acts "on guaranteeing the safety of persons participating in criminal proceedings", "on combating terrorism", "on the Security Service of Ukraine", "on operational investigations" and "on the police".

This legislation provides that the following actions may be taken to guarantee the safety of such persons: personal protection; protection of homes and property; issue of special items of equipment for personal protection, and notification of danger; use of technical means of monitoring and tapping telephone and other conversations, and visual observation; issue of new documents and changes of appearance; changes of places of work or study; resettlement in other locations;

accommodation in pre-school institutions or institutions of the social security system; ensuring the confidentiality of personal information; holding of closed court hearings, etc.

Security measures in respect of such persons are taken by decision of an investigatory body, official investigator, prosecutor or court, or of an agency conducting an operational investigation in respect of persons who have participated in or assisted with the detection, prevention, suppression or exposure of crime.

The legal and administrative measures for the protection of such persons which Ukraine could take in cooperation with another State or at its request are determined in the light of bilateral and multilateral agreements.

Reply to question 1.15

Questions of criminal prosecution for recruitment to terrorist organizations, including recruitment through deception, are dealt with in accordance with national legislation, in particular the Criminal Code, the Code of Criminal Procedure and the Act "on combating terrorism".

Criminal liability for the commission of offences connected with the preparation, attempt or commission of a terrorist act is regulated by article 258 of the Criminal Code and the corresponding articles of the Act "on combating terrorism". The provisions of the Criminal Code take precedence over other legislation establishing criminal liability for acts characterized as crimes.

Article 258 of the Criminal Code defines "terrorism" as the use of weapons, causing of an explosion or commission of arson or other acts constituting a threat to human life or health, or the causing of substantial property damage or other grievous consequences when such acts are committed with the purpose of jeopardizing public safety, intimidating the population, or provoking a military conflict or international complications, or with the purpose of influencing the taking of decisions or procuring the commission or omission of any act by the central or local authorities, officials of such authorities, associations of citizens, or legal entities, or with the purpose of drawing public attention to specific political, religious or other views of the perpetrator (terrorist), as well as the making of threats to commit such acts for the same purposes.

Paragraphs 2 and 3 of article 258 provide for liability for the same acts when repeated or committed by a group of persons acting on the basis of prior agreement or when the acts result in substantial material damage or other grievous consequences, including loss of life.

Paragraph 4 establishes liability for "forming a terrorist group or terrorist organization, leading or participating in such a group or organization, or furnishing material, organizational or other assistance for the formation or operation of a terrorist group or terrorist organization".

Under paragraph 5 of article 258 of the Criminal Code, "any person, except an organizer or leader, who voluntarily reports an act referred to in the fourth part of this article to the law enforcement agencies and helps to halt the activities of a terrorist group or organization or to expose offences committed in connection with the formation or operation of such a group or organization, if his actions do not

contain the elements of another offence, shall be exempted from criminal liability for such acts".

Article 1 of the Act "on combating terrorism" provides that "when terrorist activities are accompanied by the commission of offences referred to in articles 112, 147, 258-260, 443 and 444, as well as in other articles of the Criminal Code, liability for their commission shall arise in accordance with the Criminal Code".

The provisions of the Act "on combating terrorism" define in detail the concepts of terrorism, a terrorist group or organization, and terrorist activity. Terrorist activity specifically embraces the recruitment, arming, training and use of terrorists.

Article 25 of the Act contains an exhaustive list of the circumstances entailing the liability of managers of enterprises, officials, institutions and organizations, and of citizens, in respect of the promotion of terrorist activities, including the recruitment of individuals for terrorist activities, assisting the creation of channels for supplying weapons to terrorists, and the movement of terrorists across the State frontier of Ukraine (para. 6).

It may thus be stated that Ukraine's national legislation establishes the criminal liability of persons involved in the recruitment of terrorists, regardless of whether such persons are themselves members of a terrorist organization or of the form and means of recruitment.

The question of the criminal liability of persons recruited to terrorist organizations by deception and misled as to the terrorist purposes of such organizations must be addressed in the light of the fundamental provisions of the Constitution and the criminal and criminal-procedure legislation concerning the assumption of the innocence of accused persons, which enshrine the principle that no one may be convicted of a crime or subjected to punishment except by sentence of a court and in accordance with the law (article 62 of the Constitution; articles 5, 15, 22, 53.1, 73, 74 and 327 of the Code of Criminal Procedure).

Accordingly, the question of culpability with respect to the acts of persons recruited to terrorist organizations by deception must be considered on a case-by-case basis after the investigation agencies and the courts have taken all the steps specified in the legislation for the comprehensive and objective investigation of the facts of the case and the establishment of both incriminatory and exculpatory circumstances aggravating or mitigating the accused's liability, as well as circumstances excluding criminal proceedings (articles 6 and 22 of the Code of Criminal Procedure).

In order to establish that an offence has been committed, it is mandatory to determine the target and nature of the crime, the intention and the identity of the perpetrator, and the perpetrator's guilt, as well as demonstrating that the act constituted a public danger. The absence of just one of these elements means that there is no corpus delicti in respect of the act.

Articles 260 and 447 of the Criminal Code, referred to in the CTC letter of 16 July 2004, establish criminal liability for the establishment of paramilitary or armed formations not covered by the law and mercenarism, i.e. concomitant offences which, in certain circumstances, may be linked to terrorist activities. Specifically, article 447, paragraph 1, prohibits "the recruitment, financing,

equipping or training of mercenaries with a view to using them in armed conflicts of other States or in acts of violence aimed at overthrowing the authorities of a State or violating its territorial integrity, as well as the use of mercenaries in armed conflicts or actions".

The investigation of these types of offences is governed by the same principles and rules of criminal and criminal-procedure legislation as apply to terrorist activities.

Reply to question 1.16

We can offer the following information to supplement the details given on question 1.12 on the steps taken by Ukraine to prevent unlawful crossing of its State borders and the movement of terrorists and terrorist groups. The Cabinet of Ministers issued a decree confirming the legislation and regulations governing the procedures for crossing the State border and the movement of goods and means of transport across the border, together with a model technical system for authorizing border crossings by carriers' means of road, water, rail and air transport and the movement across the border of the goods carried by them.

Persons, means of transport, cargoes and other property crossing the State border at crossing points are subject to the border and other controls specified in national legislation. The passport documents of individuals crossing the State border at crossing points are checked by officials of the border-control units. Special equipment is used for checking the documents. The checks determine whether the passport documents are valid for entering or leaving Ukrainian territory or crossing Ukrainian territory in transit and establish the legal grounds for authorizing persons to cross the border.

Foreigners and stateless persons lawfully entering Ukraine and their passport documents are registered at border crossing points. A mark indicating the registration of a foreigner at a crossing point is valid throughout Ukrainian territory.

In addition, the Ministry of Internal Affairs is compiling a databank on the documentation and recording of persons arrested for crossing the State border unlawfully or for being present in Ukrainian territory illegally.

Reply to question 2.2

Ukraine's report on the implementation of the recommendations resulting from the Kyiv seminar on improving legislation to combat terrorism and its progress report on the drafting of amendments to national legislation in accordance with the outcome of the interdepartmental conference attended by an expert from the United Nations Office on Drugs and Crime, which discussed recommendations for the further development of legislation in this area, including legislation to combat the financing of terrorism, will be transmitted once steps have been taken to complete the elaboration and the internal discussion and adoption of the draft legislation in question.

Reply to question 2.4

The assistance received by Ukraine so far from the United Nations with a view to more comprehensive implementation of Security Council resolution 1373 (2001) has consisted of the provision of advisory services to improve Ukraine's legislative

base for combating terrorism. Ukraine will be grateful for the provision of other forms of assistance, technical aid, for example. Ukraine will submit to the CTC additional information about the specific types of assistance needed.

Reply to question 2.5

In view of the assessments made by United Nations experts of the outcome of the Kyiv seminar on improving legislation and of the recommendations drawn up on the basis of the seminar, Ukraine is willing, by way of assistance to other States, to share its experience of creating a legislative and regulatory base for combating terrorism.

15 October 2004